

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ariana Burton,

Plaintiff(s),

vs.

Dr. Chidiogo Nwokike,

Defendant(s).

Case No. 2:24-cv-00783-MDC

Order Dismissing Case

The Court previously ordered the plaintiff to either pay the filing fee or file an in forma pauperis (“IFP”) application. Plaintiff has not filed an IFP application or paid the filing fee, and the deadline to do so has passed. *Id.* The Court dismisses this case.¹

I. Legal Standard

District Courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A Court may dismiss an action based on a party’s failure to obey a Court Order or comply with local rules. *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with Court Order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;

¹ Plaintiff received notice that she option to decline the Magistrate Judge overseeing this case within 21 days. See ECF No. 2. That deadline has long passed, and plaintiff did not file anything in response to that notice.

(3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

II. Analysis

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. As noted in the Court's previous order, plaintiff is a frequent litigator in this Court, bordering on vexatious, so she is familiar with the Court's rules and has chosen not to comply with this Court's order. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

The fifth factor requires the Court to consider whether less drastic alternatives can be used to correct the party's failure that brought about the Court's need to consider dismissal. *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives before the party has disobeyed a Court Order does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the Court's Order as satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally dismissing a case but must explore possible and meaningful alternatives.” *Henderson*, 779 F.2d at 1424.

This Court cannot operate without collecting reasonable fees and litigation cannot progress

1 without a plaintiff's compliance with Court Orders. The only alternative is to enter another order setting
2 another deadline. Issuing another order, however, will only delay the inevitable and further squander the
3 Court's finite resources. Setting another deadline is not a meaningful alternative given these
4 circumstances. The fifth factor favors dismissal.

5 After weighing these dismissal factors, the Court finds that they weigh in favor of dismissal.
6 Plaintiff has apparently abandoned this case. For the reasons discussed in this order and the Court's
7 earlier order (ECF No. 4), plaintiff's case is dismissed.

8 IT IS SO ORDERED that:

- 9 1. This case is DISMISSED without prejudice.
- 10 2. The Clerk of Court is DIRECTED to enter final judgment in favor of the defendant
11 and close this case.

12 Dated this 25th day of June 2024.

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16 Hon. Maximiliano D. Couvillier III
17 United States Magistrate Judge
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